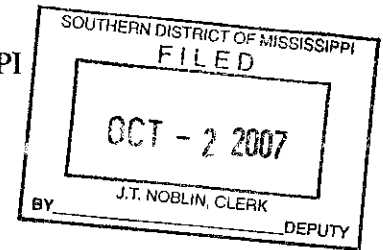


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION



DENNIS JOHNSON AND CASEY JOHNSON,
THE WRONGFUL DEATH HEIRS AND BENEFICIARIES
OF DINESE JOHNSON, DECEASED, MINORS, BY AND
THROUGH THEIR UNCLE AND NEXT FRIEND, JIMMY
JOHNSON

PLAINTIFFS

VS.

CIVIL ACTION NO. 5:07cv191DCB-
JMR

MED EXPRESS AMBULANCE SERVICE, INC.,
AMERICAN MEDICAL RESPONSE, INC., AND
UNKNOWN CORPORATIONS A AND B

DEFENDANTS

NOTICE OF REMOVAL

TO: Jimmy Johnson for and on behalf of Dennis Johnson and Casey Johnson
c/o Carroll Rhodes, Esq.
The Law Offices of Carroll Rhodes
P.O. Box 588
Hazlehurst, MS 39083

Carroll Rhodes, Esq.
The Law Offices of Carroll Rhodes
P.O. Box 588
Hazlehurst, MS 39083

Honorable Binky L. Vines
Adams County Circuit Clerk
P.O. Box 1224
Natchez, MS 39121

YOU WILL PLEASE TAKE NOTICE that this Notice of Removal and the exhibits
attached hereto have been filed this day for and on behalf of defendant American Medical

Response, Inc. ("AMR") in the United States District Court for the Southern District of Mississippi, Western Division. You are hereby served with a copy of this Notice of Removal of said cause to the United States District Court from the Circuit Court of Adams County, Mississippi, upon the grounds stated herein. Pursuant to said removal, you will proceed no further in said Circuit Court of Adams County, Mississippi, and you will be mindful of the provisions of Title 28 U.S.C. Section 1441, *et seq.* Please take notice hereof and govern yourselves accordingly.

As its short and plain statement of the grounds for removal of this civil action, AMR would show unto the Court the following:

I.

There is now pending in the Circuit Court of Adams County, Mississippi, a certain civil action styled "Dennis Johnson and Casey Johnson, the wrongful death heirs and beneficiaries of Denise Johnson, deceased, minors, by and through their uncle and next friend, Jimmy Johnson vs. Med Express Ambulance Service, Inc., American Medical Response, Inc., and Unknown Corporations A and B," being civil action number 07-KV-0026-S on the docket of said Court.

II.

The plaintiffs were alleged at the time the Complaint was filed to be minors bringing suit by and through their uncle and next friend, an adult resident citizen of Adams County, Mississippi, and AMR avers that to the best of its knowledge Plaintiffs are, at the time of the filing of this Notice of Removal, still resident citizens of Adams County, Mississippi. Defendant Med Express was alleged at the time the Complaint was filed to be a foreign corporation organized and existing under the laws of the State of Louisiana and not qualified to do business in the State of

Mississippi, and AMR avers that to the best of its knowledge Med Express is, at the time of the filing of this Notice of Removal, still a Louisiana corporation not qualified to do business in Mississippi. Defendant AMR was at the time the Complaint was filed and is presently a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Colorado. There is, therefore, complete diversity of citizenship between the defendants and the plaintiff.

III.

The amount in controversy in said civil action exceeds the sum and value of \$75,000, exclusive of interest and costs. As evidence that the plaintiffs seek in excess of the \$75,000 minimum jurisdictional amount of this Court in matters regarding diversity, AMR offers unto this Court the plaintiffs' responses to First Set of Interrogatories, Requests for Production and Requests for Admission, attached as Exhibit "A."

IV.

Plaintiffs' responses to AMR's requests for admission establish the necessary grounds for removal under Title 28 U.S.C. § 1446, et seq. In pertinent part, 28 U.S.C. § 1446(b) states,

If the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by § 1332 of this title more than one year after commencement of the action.

The "other paper" referenced in Section 1446(b) must be something more than conclusory allegations. *McLain v. American International Recovery*, 1 F. Supp.2d 628, 631 (S.D. Miss.

1998). In *McLain*, the *ad damnum* clause in the complaint was stated at \$49,500. *Id.* at 630. The defendant's attorney asked that the plaintiff's attorney execute a stipulation limiting damages to \$75,000. *Id.* However, the plaintiff's attorney failed to execute said stipulation, and the defendant's attorney subsequently removed the case. *Id.* This Court, speaking through Judge Barbour, held that such a stipulation did not rise to the level of an amended pleading or other paper as prescribed by § 1446(b) for removal. *Id.* at 631. Judge Barbour stated that the preferred method for establishing the amount in controversy requirement when it is not established in the initial pleading is to utilize state court discovery procedures.

Specifically, the defense lawyer can have the plaintiff admit through a deposition, an interrogatory, or a request for admission that his damages do not exceed \$75,000. If the plaintiff denies this request, the case can be removed and this discovery response should be filed in the record. This discovery response will constitute "other paper" that affirmatively shows that the jurisdictional amount may be satisfied.

Id. (emphasis added).

In response to Request No. 2 of their responses to AMR's requests for admission plaintiffs have denied that they seek to recover less than \$75,000, exclusive of interest and costs. See Exhibit "A."¹ Thus the plaintiffs have established that they seek damages in excess of the jurisdictional minimum required by 28 U.S.C. § 1332 for removal of an action due to diversity of citizenship of the parties to that action.

¹Due to an uncorrected typographical error, the First Interrogatories, First Requests for Production and First Requests for Admissions stated that they were posed on behalf of defendant Med Express rather than AMR. That error is irrelevant to the issue of removal because plaintiffs' complaint seeks damages from both Med Express and AMR.

V.

As further evidence that the plaintiffs seek in excess of the \$75,000 minimum jurisdictional amount of this Court in matters regarding diversity, AMR offers Plaintiffs' complaint, which seeks unspecified damages for the alleged wrongful death of the decedent, including pain and suffering, emotional distress, loss of society and companionship, net cash value of life expectancy, medical expenses, funeral expenses, and punitive damages. See Exhibit "B."

VI.

Plaintiffs' discovery responses were served on AMR on September 24, 2007. Such discovery responses constitute an "other paper from which it may first be ascertained that the case is one which is or has become removable," and the 30 days after receipt of the "other paper" provided by Section 1446(b) have not yet elapsed. This notice of removal is therefore timely.

VII.

Pursuant to Title 28 U.S.C. Section 1446(a), the defendants attach hereto as Exhibit "C" copies of all process, pleadings, and orders served upon it, and asks that said exhibit be considered a part hereof the same as though copied herein in words and figures in full.

VIII.

Defendant, upon the filing of this Notice of Removal, have given notice to Casey Johnson and Dennis Johnson, and their uncle and next friend, Jimmy Johnson, and their attorney of record, Carroll Rhodes, of the filing of said Notice of Removal of said civil action, and simultaneously therewith, Defendant has filed a true and correct copy of the Notice of Removal with the Clerk of the Circuit Court of Adams County, Mississippi, together with the exhibits thereto, all in compliance with Title 28 U.S.C. Section 1446(d).

WHEREFORE, PREMISES CONSIDERED, American Medical Response, Inc., prays that this Notice of Removal and exhibits thereto be received and filed, and that the said Circuit Court of Adams County, Mississippi, proceed no further herein. Defendant further prays for all necessary writs to bring before this Honorable Court all records and proceedings in the said Circuit Court of Adams County, Mississippi, and Defendant pray for such other, further, special and general relief as it is entitled to receive.

Respectfully submitted,

AMERICAN MEDICAL RESPONSE, INC.

BY: John B. Clark
OF COUNSEL

BY: Tom Julian
OF COUNSEL

JOHN B. CLARK - BAR # 6263
TOM JULIAN - BAR # 101905
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CERTIFICATE OF SERVICE

I, John B. Clark, attorney for American Medical Response, Inc., defendant herein, hereby certify that I have this day filed the original of the above and foregoing Notice of Removal and exhibits thereto in the United States District Court for the Southern District of Mississippi,

Western Division, and that upon the filing of the original notice and exhibits thereto, I have served a true and correct copy of the said notice and exhibits on:

Jimmy Johnson for and on behalf of Dennis Johnson and Casey Johnson, in care of their attorney, Carroll Rhodes, by mailing to his usual business address in Hazlehurst, Mississippi;

Carroll Rhodes, attorney of record for the plaintiffs, Jimmy Johnson for and on behalf of Dennis Johnson and Casey Johnson, by mailing to his usual business address in Hazlehurst, Mississippi; and

Honorable Binky L. Vines, Circuit Clerk of Adams County, Mississippi, by mailing to his usual business address at P.O. Box 588, Hazlehurst, MS 39083, Mississippi;

all to effectuate the removal of a civil action entitled, "Dennis Johnson and Casey Johnson, the Wrongful Death Heirs and Beneficiaries of Denise Johnson, Deceased, Minors, By and Through their Uncle and Next Friend, Jimmy Johnson vs. Med Express Ambulance Service, Inc., American Medical Response, Inc., and Unknown Corporations A and B," being civil action number 07-KV-0026-S on the docket of said Circuit Court, to the United States District Court for the Southern District of Mississippi, Western Division, pursuant to the statutes and rules in such cases made and provided.

WITNESS MY SIGNATURE hereto, this the 7 day of October, 2007.


JOHN B. CLARK

5460-117056